



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Mark E. Roper
Cave Road Utilities, LLC
418 S. Samuel St.
Charles Town, WV 25414

DATE: December 1, 2011

ORDER NO.: 7456

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Cave Road Utilities, LLC, (hereinafter "Cave Road").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Cave Road operates a package wastewater treatment plant (WWTP) located near Charles Town, Jefferson County, West Virginia. WV/NPDES Water Pollution Control Permit No. WV0103110 with Registration Number WVG550636 was transferred from Cave Quarter Utilities to Cave Road on November 30, 2006. The permit was reissued on June 13, 2011, and it expires on September 23, 2015.
2. On January 11, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of Cave Road and observed that the metal partition had rusted through between the contact chamber and the clarifier. A warning was issued and a letter was requested concerning Cave Road's plans to repair the divider.
3. On January 22, 2010, WVDEP received a fax from Mr. Mark Roper, owner of Cave Road, stating that the company was working on the divider.

4. On June 23, 2010, WVDEP personnel conducted an inspection of Cave Road and noted the following observations, for which a warning was issued:
 - a. The blower made a clicking sound.
 - b. Discharge Monitoring Reports (DMRs) were not submitted for the 4th quarter of 2009 and 1st quarter of 2010.
5. On October 20, 2010, WVDEP personnel conducted an inspection of Cave Road and observed the following:
 - a. Discharge from the outlet into the receiving stream had a brown discoloration, which is a violation of Cave Road's WV/NPDES Permit (Section F). Causing a distinctly visible color in waters of the State is also a violation of WV Legislative Rule 47CSR2 Section 3.2.f. NOV No. w10-19-0117-203 was issued.
 - b. Excessive amount of solids were allowed to accumulate in the clarifier, which is a violation of Cave Road's WV/NPDES Permit (Section F).
 - c. The plant was operated in a manner which allowed solids to enter the receiving stream, which is a violation of Cave Road's WV/NPDES Permit (Section F).
 - d. The outlet marker sign was not maintained, which is a violation of Cave Road's WV/NPDES permit (Section F). NOV No. w10-19-0116-203 was issued.
 - e. DMRs for 1st, 2nd, and 3rd quarters of 2010 were not submitted, which is a violation of Cave Road's WV/NPDES permit (Section B). NOV No. w10-19-0115-203 was issued.
6. On October 29, 2010, WVDEP received a fax from Mr. Russell Roper, a representative of Cave Road, stating, "We will take care of notice on Section F-1."
7. On February 15, 2011, WVDEP personnel conducted an inspection of Cave Road and observed the following:
 - a. DMRs for 2nd and 3rd quarters of 2010 were not submitted. In addition, DMRs for 4th quarter of 2009, 1st and 4th quarters of 2010, and 1st quarter of 2011 were not signed. NOV No. w11-19-017-203 was issued on February 16, 2011 for failure to submit and/or sign DMRs, as outlined within Section B of Cave Road's Permit.
 - b. Discharge from the outlet into the receiving stream had a brown discoloration, which is a violation of Cave Road's WV/NPDES Permit (Section F). Causing a distinctly visible color in waters of the State is also a violation of WV Legislative Rule 47CSR2 Section 3.2.f. NOV No. w10-19-018-203 was issued on February 16, 2011.
 - c. Excessive amount of solids were allowed to accumulate in the clarifier, which is a violation of Cave Road's WV/NPDES Permit (Section F).

- d. The plant was operated in a manner which allowed solids to enter the receiving stream, which is a violation of Cave Road's WV/NPDES Permit (Section F).
 - e. The outlet marker sign was not maintained, which is a violation of Cave Road's WV/NPDES permit (Section F). NOV No. w10-19-019-203 was issued.
8. On March 3, 2011, WV DEP received a fax from Mr. Russell Roper, a representative of Cave Road, stating, "We are immediately seeking additional advice for the working and maintenance of the package plant."
9. WVDEP personnel reviewed the DMRs submitted by Cave Road from January 2009 through March 2011 to determine facility compliance with the terms and conditions of its WV/NPDES Permit.
- a. The exceedances (refer to Attachment A) are summarized as follows:
 - i. Two (2) minor violations.
 - ii. Four (4) moderate violations.
 - iii. Two (2) major violations.
 - b. DMRs were not submitted for the 2nd quarter of 2009 and the 2nd and 3rd quarters of 2010.
 - c. Out of the six (6) DMRs filed, four (4) were not signed by the Officer of the Company.
 - d. Two (2) DMRs with different analytical results were submitted for the 4th Quarter of 2010.
10. On October 18, 2011, WVDEP personnel and representatives of Cave Road met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Cave Road shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and all pertinent laws and rules.
2. Within thirty (30) days of entry of this Order, Cave Road shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Cave Road will achieve compliance with all terms and conditions of its WV/NPDES permit and all pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Cave Road's Legislative Rule and permit violations, Cave Road shall be assessed a civil administrative penalty of seventeen thousand seven hundred ten dollars (\$17,710) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$983.88 due on or before February 1, 2012.
Payment 2 in the amount of \$983.88 due on or before March 1, 2012.
Payment 3 in the amount of \$983.88 due on or before April 1, 2012.
Payment 4 in the amount of \$983.88 due on or before May 1, 2012.
Payment 5 in the amount of \$983.88 due on or before June 1, 2012.
Payment 6 in the amount of \$983.88 due on or before July 1, 2012.
Payment 7 in the amount of \$983.88 due on or before August 1, 2012.
Payment 8 in the amount of \$983.88 due on or before September 1, 2012.
Payment 9 in the amount of \$983.88 due on or before October 1, 2012.
Payment 10 in the amount of \$983.88 due on or before November 1, 2012.
Payment 11 in the amount of \$983.88 due on or before December 1, 2012.
Payment 12 in the amount of \$983.88 due on or before January 1, 2013.
Payment 13 in the amount of \$983.88 due on or before February 1, 2013.
Payment 14 in the amount of \$983.88 due on or before March 1, 2013.
Payment 15 in the amount of \$983.88 due on or before April 1, 2013.
Payment 16 in the amount of \$983.88 due on or before May 1, 2013.
Payment 17 in the amount of \$983.88 due on or before June 1, 2013.
Payment 18 in the amount of \$984.04 due on or before July 1, 2013.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Cave Road hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Cave Road agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Cave Road does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Cave Road other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Cave Road shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Cave Road becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Cave Road intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Cave Road (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Cave Road of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Cave Road to additional penalties and injunctive relief in accordance with the applicable law.

5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Cave Road, its successors and assigns.
7. This Order shall terminate upon Cave Road's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Mark E. Roper
Cave Road Utilities, LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date